IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No.8166 of 2007

Shri Jitendra Rambilas Bhandari
and another ..Petitioners

vs.

1. Rupee Coop.Bank Ltd.
and others ...Respondents

Shri A.V.Anturkar i/b Shri S.B.Deshmukh for petitioners.
Shri Prashant Naik for respondent no.1.
Shri H.R.Pawar for respondent no.7

CORAM: S.C.DHARMADHIARI J.
11th December, 2007

P.C.

1. In this writ petition under Articles 226 and 227 of the Constitution of India, the orders under challenge are on the revision applications which have been preferred before the Maharashtra State Cooperative Appellate Court, Mumbai and disposed off on 20th October, 2007.

2. It is not disputed before me by the learned Counsel appearing for both sides that in the subject dispute being Dispute No.CC-II-345 of 2002, the consent terms were filed between the original disputant Bank and opponent nos. 1 to 5 i.e. the principal borrowers on 28th November, 2007. An order has been made in terms of this consent terms by the Cooperative Court

Judge and which states that the consent terms are confirmed by the parties and he is satisfied that the compromise is lawful. There being no impediment in passing an order in terms of the consent terms, he ultimately passed the said order. Now, there is a consent award on record.

3. Shri Anturkar states that despite these subsequent developments which have occurred during the pendency of the present writ petition, challenge to the orders impugned in this petition does not become academic but rather survives.

4. The orders under challenge were made during the course of the dispute application. The Court Receiver was appointed on 17th October, 2002 with a direction to him to auction the property of which he stood appointed as such.

5. In pursuance thereof, the Court Receiver invited bids and submitted a report to the Court.

6. The grievance of the present petitioner is that his bid was highest. Yet, based upon certain developments he enhanced the same. After enhanced bid was placed before the

Cooperative Court, the same came to be accepted and the Court Receiver was directed to complete the formalities thereafter.

7. Three revision applications were filed challenging this order of 10th August, 2007 before the Cooperative Appellate Court. Revision Application no.46 of 2007 was filed by the disputant Bank. Revision Application No.47 of 2007 was filed by the original opponents/borrowers whereas the third revision application was by another bidder, respondent no.8 to this writ petition.

8. These revision applications have been disposed of on 22nd October, 2007 and the learned Judge has allowed the same. He has directed the Receiver to issue fresh publication for fresh bids.

9. In the light of the subsequent developments which now disposed of the dispute itself in terms of the consent terms, and the consent award being made by the Trial Court, to my mind, all challenges in the present petition are academic. I cannot agree with Shri Anturkar that the clauses in the consent terms provide that in default the properties would be put to

sale once again and, therefore, until and unless the entire amount under the award is paid the petition does not become infructuous.

10. To my mind, the orders under challenge are based upon the sale which was ordered by the Trial Court. The sale was an interim sale. On that occasion, the main proceedings were pending. The Court Receiver was also appointed during the pendency of the dispute. After the consent award is made the said sale itself is infructuous. The Court Receiver has been continuing but he has no powers to sell the properties unless and until opportunity is given to the opponents to pay the sums. Therefore, even if there is a default in future, that sale would be fresh cause of action. That would be depending upon the orders and directions issued while executing the consent award in case the same is defaulted. The present proceedings are during the pendency of the dispute. In such circumstances, on account of subsequent developments the petition is rendered infructuous and is dismissed as such. However, this does not mean that the Court has approved the course of action suggested by the Trial Court with regard to the interim sale so also the revisional court’s orders confirming the

order of the Trial Court and steps taken in pursuance thereof.

11. In the light of the fact that the petition has become infructuous on account of subsequent developments, without disturbing the other conclusions and leaving larger issues open, I direct that the observations of the learned President against the Advocate appearing for the present petitioner shall stand deleted from the record.

(S.C.DHARMADHIKARI J.)